

Exhibit SS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

YATRAM INDERGIT, on behalf)	
of himself and others)	
similarly situated,)	
)	
Plaintiff,)	CIVIL ACTION NO.
)	1:08-cv-09361-PGG-
VS.)	HBP
)	
RITE AID CORPORATION, RITE)	
AID OF NEW YORK, INC., and)	
FRANCIS OFFOR as Aider &)	
Abettor,)	
)	
Defendants.)	
_____)	

DEPOSITION OF SANDRA L. MCCARTHY
Los Angeles, California
Friday, August 12, 2011

Reported by: NIKKI ROY
CSR No. 3052

1 A. Uh-huh.

2 Q. And you've been a store manager since on or
3 around October 9th, 2005. Does that sound correct?

4 A. Correct.

5 Q. And are you still the store manager at
6 Springfield?

7 A. Yes.

8 Q. Are you still exempt, or are you hourly now?

9 A. Exempt.

10 Q. During the time that you were a, that you have
11 been a store manager for Rite Aid, did you receive any
12 training on the Fair Labor Standards Act, sometimes
13 called the FLSA?

14 A. Not that I recall.

15 Q. Other than something that you learned from your
16 lawyers -- I don't want to -- I don't want information
17 that you've learned from your lawyers -- prior to this
18 lawsuit, did you have an understanding of the difference
19 between an exempt employee and a nonexempt employee?

20 A. No, not that I -- I don't know.

21 Q. At any time during your employment as an exempt
22 manager -- so that would be from -- I'm going to
23 consider your assistant store manager time from 2000 --
24 roughly June of 2000 forward -- did you ever tell anyone
25 at Rite Aid that you thought you should be classified as

1 nonexempt?

2 MR. SABA: Objection; form.

3 THE WITNESS: Not that I recall.

4 BY MS. LIVELY:

5 Q. Did you ever ask anyone to be changed from
6 exempt to being hourly paid, from June of 2000 forward?

7 A. No.

8 MR. SABA: And just for purposes of the
9 deposition, I'm assuming you're using "exempt" as a
10 designation. Obviously, that's what the claims of the
11 lawsuit are about.

12 MS. LIVELY: Correct.

13 MR. SABA: Yeah.

14 BY MS. LIVELY:

15 Q. Did you participate in any -- during the period
16 that you were a store manager, from 2005 forward, have
17 you participated in any way of [sic] the hiring of
18 assistant store managers?

19 A. No.

20 Q. Do you interview assistant store managers?

21 A. No.

22 Q. Who, as far as you know, hires assistant store
23 managers?

24 A. Human resources and district manager.

25 Q. And has that been the same throughout your time

1 as a store manager at Rite Aid from 2005 forward?

2 A. Yes.

3 Q. When you were promoted to the exempt ASM
4 position in June of 2000, did you understand that you
5 would be being paid a salary at that point in time?

6 A. Yes.

7 Q. And did you understand that the salary you were
8 being paid was designed to compensate you for all hours
9 worked?

10 A. Yes.

11 Q. In other words, you could work 30 hours one
12 week and 80 hours one week, and you would get the same
13 salary; is that correct?

14 A. Correct. But it was scheduled on a 45-hour
15 week.

16 Q. But whether you worked more than 45 hours or
17 less than 45 hours, you would get the same salary,
18 correct?

19 A. Yes.

20 Q. And you knew when you were promoted to a
21 salaried ASM that you would not be entitled to overtime;
22 is that correct?

23 A. Yes.

24 Q. And when you were promoted to the store manager
25 position in October of 2005, you also knew that you

1 would not be entitled to overtime, correct?

2 A. Yes.

3 Q. And you always accepted your paychecks when you
4 received them; is that correct -- without protest?

5 A. I don't --

6 Q. When you received a paycheck when you were a
7 store manager, did you ever protest the paycheck and
8 say, "I should be being paid overtime," or something to
9 that effect?

10 A. No.

11 Q. During Two Thousand- -- start with 2007, as
12 a -- you're a store manager in Florence, I believe, at
13 the time. What was the maximum number of hours that you
14 worked in any given week as a store manager?

15 I'm not asking for an average. I'm saying, if
16 you had to take the worst week you had in 2007 as a
17 store manager, how many hours would you say you worked?

18 A. Eighty-five.

19 Q. Okay. And was there anything particular going
20 on that made that week that busy?

21 Such as, was it the holiday season, Valentine's
22 Day, people called in sick; any factors like that that
23 made that week so busy?

24 A. Just cleaning up the store.

25 Q. Anything else?

1 A. Just, I took over the store and I was cleaning
2 it up and, and I -- yeah.

3 Q. When you --

4 A. No, wait. 2007?

5 Q. 2007.

6 A. I'm sorry.

7 Q. That's all right. Slow down. It's -- you can
8 take your time to think about something before you give
9 an answer, if you need to.

10 A. In 2007, that's correct on the hours.

11 Q. Uh-huh.

12 A. We were building a new store --

13 Q. Okay.

14 A. -- and we were moving product.

15 Q. What new store?

16 A. We were moving -- no. They built a new
17 store -- they relocated a store in Florence.

18 Q. And were you participating in that relocation?

19 A. Correct.

20 Q. And how about in 2008; if you could take the
21 worst week in 2008, how many hours did you work during
22 that week?

23 A. That one, one of those weeks was probably 90.

24 Q. Okay.

25 A. And that was when we actually opened the new

1 store in Florence.

2 Q. And what was it -- I've never been through a
3 store opening. So what was it about the store opening
4 that made so many hours that you needed to work?

5 A. We had to make sure all the sets were complete,
6 that the store was -- product was on the shelf, shelves
7 were full, all the signage was up.

8 Q. Did you have to hire additional employees when
9 the new store was opened?

10 A. I did not hire them. People came from other
11 stores to help with that.

12 Q. And I'm going to ask you the same thing about
13 2009. Taking your worst week, how many hours did you
14 work in 2009?

15 A. Around 80.

16 Q. And was there anything particular going on that
17 led to that?

18 A. Shortage of management; management out on --
19 actually on medical leave.

20 Q. And is this ASMs that are out on medical leave?

21 A. Supervisors.

22 Q. Okay. And what about 2010; worst week ever
23 2010, how many hours did you work?

24 A. That was last year. Ninety. Didn't have any
25 management people -- enough management people to cover

1 the shifts in the store.

2 Q. And was there supposed to be a manager on duty
3 at all time?

4 A. Yes. Management.

5 Q. More than one manager at all time?

6 A. No.

7 Q. And in 2010, you moved -- you were in
8 Springfield, correct?

9 A. Yes.

10 Q. Okay. And 2011, worst week ever so far,
11 hours-wise?

12 A. Probably 80; and the same thing --

13 Q. Not enough --

14 A. -- not enough management people to cover the
15 opening and closings.

16 Q. Is the Florence, Eugene or Springfield
17 stores -- are any of those union stores?

18 A. No.

19 Q. Are any of them 24-hour stores?

20 A. No.

21 Q. Do you remember generally what the hours of
22 operation at Florence were when you were the store
23 manager there?

24 A. 8:00 a.m. to 9:00 p.m.

25 Q. How about Eugene?

1 A. Same.

2 Q. And how about Springfield?

3 A. Same. The only difference on Florence is
4 Sundays was 9:00 to 7:00.

5 Q. During the time that you were a store manager
6 for Rite Aid, was your primary job duty to manage the
7 store on a day-to-day basis?

8 A. Yes, with what I've been given.

9 Q. Did you think -- and do you think you were a
10 good store manager?

11 A. Yes.

12 Q. And what do you think your three best qualities
13 as a store manager are?

14 A. Honesty, hard-working. I don't know. Fair.

15 Q. Do you tend to get along well with the
16 employees who work below you?

17 A. Excuse me?

18 Q. Do you tend to get along well with the
19 employees who work below you?

20 A. I do, yes.

21 Q. And I'm going to go through store by store with
22 you and ask you some different questions about each
23 store -- we'll do Florence and then Eugene and then
24 Springfield -- regarding shifts, number of employees,
25 size of the store, so that I can have a better

1 Q. More often than not, were there more than two
2 people working at the store?

3 A. No. It just depends on the hours that was
4 given to me.

5 Q. Do you know the square footage of the Florence
6 store?

7 A. I don't recall.

8 Q. Would you consider it a small store or a big
9 store or a medium store?

10 A. Medium.

11 Q. When you were at -- the store manager at the
12 Florence store, were you the highest-ranking individual
13 at the store?

14 A. At the store level, yes.

15 Q. And did you have the authority to direct the
16 work of the ASM, the shift supervisors and the cashiers?

17 A. I wrote a work list of what was given to us in
18 the profit planner, yes.

19 Q. Other than writing the work list, if you had
20 seen a cashier completing a task and you thought another
21 task was more important, would you have had the
22 authority to say to that cashier, "Hey, instead of
23 facing merchandise, I need you to go and clean up a
24 spill," or something like that?

25 A. Yes.

1 Q. Did you have authority over any of the
2 individuals in the pharmacy department?

3 A. I -- I wrote their schedules.

4 Q. Including the pharmacist?

5 A. No.

6 And I wrote their schedules based on the hours
7 in the system.

8 Q. Did you use StaffWorks for your scheduling?

9 A. Back then, yes.

10 Q. Would a cashier have the authority at the
11 Florence store to direct your work, to tell you what to
12 do?

13 A. No.

14 Q. Would a shift supervisor have had the authority
15 to tell you what to do?

16 A. No.

17 Q. Would an ASM have had the authority to tell you
18 what to do?

19 A. No.

20 Q. Would, excluding the pharmacist, a pharmacy
21 employee have had the authority to tell you what to do?

22 A. No.

23 Q. Now what about the pharmacist; was the
24 pharmacist a peer manager of yours, or did you have
25 authority, ultimately, over the pharmacist?

1 A. I don't have authority over the pharmacist, no.

2 Q. Was it a he or a she?

3 A. It was a he at the time.

4 Q. Did he have any sort of authority over you?

5 A. No.

6 Q. You talked about writing a work list. What do
7 you mean by a work list?

8 A. It has everybody's name on it, lunch breaks,
9 when they take their breaks and lunches; and then just a
10 list of the daily tasks that are to be done, whether
11 it's facing the store, taking out the trash, doing the
12 profit -- you know, what's in the profit planner, the
13 tasks that come down from corporate to -- to do.

14 Q. And so you would -- you would take those tasks
15 that have come down from corporate, put them on a piece
16 of paper. And would they have individuals' names
17 assigned to them or --

18 A. Yes. Everybody in the store that's working
19 that day.

20 Q. And did you do a task list on a daily basis
21 when you were there?

22 A. Yes.

23 Q. And if you weren't there, did somebody else do
24 a task list?

25 A. Yes.

1 A. He never worked for me.

2 Q. Do you know who that is?

3 A. Yes.

4 Q. How is it that you know who that is?

5 A. I met him once up at Corvallis, and his wife
6 took over the store that I left at Coburg.

7 Q. Did you ever have the opportunity to observe
8 him work?

9 A. No.

10 Q. The Eugene store, 5373, when you were there,
11 how many employees were there, roughly, working at any
12 given time?

13 Let me rephrase that. Strike that question.

14 At the Eugene store, when you were the store
15 manager, how many employees were employed at the Eugene
16 store, including pharmacy?

17 A. Approximately 15.

18 Q. And how many of those were pharmacy employees?

19 A. Six.

20 Q. And would that include one pharmacist, or more?

21 A. Two pharmacists.

22 Q. And did you have regularly scheduled shifts,
23 such as an opening and a closing shift, at the Eugene
24 store when you were the store manager?

25 A. Yes.

1 Q. And what was the opening shift, generally?

2 A. 8:00 to 3:00 or 4:00, and 4:00 to 9:00 or 1:00
3 to 9:00.

4 Q. And did you have any midday shifts?

5 A. If it was available with the hours given.

6 Q. And how many employees were generally scheduled
7 to work the opening shift?

8 A. A cashier and a supervisor/management person.

9 Q. And what about a pharmacy individual; would
10 there be a pharmacy individual there too?

11 A. Not till 9:00 o'clock, when the pharmacy
12 opened.

13 Q. And I should have asked that with --

14 A. Florence.

15 Q. -- Florence.

16 A. Same.

17 Q. Would a -- say a pharmacy tech or a pharmacist
18 would come on at 9:00 a.m.?

19 A. 9:00 a.m., yeah.

20 Q. And was it -- would you say it was more often
21 the case -- actually, strike that.

22 Did you, with any regularity, have midday
23 shifts?

24 Were people coming in midday?

25 A. Occasional; only if I had the hours.

1 Q. And did you have ASMs at the Eugene store?

2 A. Yes.

3 Q. How many ASMs?

4 A. One.

5 Q. And who was that?

6 A. Kimberly Weils, W-e-i-l-s.

7 Q. And did you have shift supervisors at the
8 Eugene store?

9 A. Two.

10 Q. And did the Eugene store have a photo
11 department?

12 A. Yes.

13 Q. And did the Florence store have a photo
14 department?

15 A. Yes. Well, not a separate photo in Florence.

16 Q. And did you complete a daily task list or a
17 work list, I think you called it --

18 A. Yes.

19 Q. -- at the Eugene store as well?

20 A. Yes.

21 Q. How is it that you would decide who should be
22 assigned what task?

23 A. Whoever was working, scheduled at the time.

24 Q. Did you have some --

25 A. For --

1 Q. I'm sorry. Go ahead.

2 A. For certain tasks that have to be done in the
3 morning, whoever was working got to do those tasks.

4 Q. Did you have a situation where some employees
5 were better than others at certain things, so you would
6 schedule them for those things, or did you try to rotate
7 tasks?

8 A. Whoever was on the schedule.

9 Q. And did you create the work list at Eugene on a
10 daily basis, for days you were there?

11 A. Yes.

12 Q. And did you have a regularly scheduled shift
13 that you worked when you were at Eugene, hours that you
14 typically came in?

15 A. Whatever the needs of the store were and
16 whatever I had scheduled or available. I never had a
17 set schedule, no.

18 Q. Did you have a set schedule at Florence?

19 A. No.

20 Q. And what sorts of tasks would be on the work
21 list for Eugene?

22 What sort of things would you write down on the
23 work list?

24 A. For everybody?

25 Q. Yes.

1 A. Facing, price changes, building ends, the
2 profit planner, whatever comes from corporate of tasks
3 that have to be done for the day.

4 Q. And you had the authority to direct your ASM,
5 shift supervisors and cashiers to do these tasks; is
6 that correct?

7 A. Yes.

8 Q. And did the cashiers, shift supervisor or ASM
9 have the authority to direct you in what task you should
10 be doing on a daily basis?

11 A. No.

12 Q. Who had the authority to direct you, what you
13 should be doing on a daily basis when you were a
14 shift super- -- excuse me -- a store manager in Eugene?

15 A. My district manager, corporate communications.

16 Q. And has Ms. Horton been your district manager
17 throughout the time you've been a store manager?

18 A. Yes.

19 Q. Did you have the authority to direct tasks of
20 the nonpharmacist pharmacy employees when you were at
21 Eugene?

22 A. No.

23 The authority?

24 Q. Well, if there was a pharmacy employee, not the
25 pharmacist --

1 A. Okay.

2 Q. -- we'll leave pharmacist out. But if there
3 was a pharmacy employee doing something, and you thought
4 he or she should be doing a separate task, maybe things
5 that had spilled in front of the pharmacy counter --

6 A. Oh.

7 Q. -- did you have the authority to say to that
8 employee, "Can you" --

9 A. Yes.

10 Q. -- "go clean up the spill?"

11 A. Yes.

12 Q. Do you know -- do you recall what the volume of
13 the Eugene store was?

14 A. Approximately 32-, 33,000 a week. That's just
15 front end.

16 Q. Front end --

17 A. I don't know --

18 Q. -- sales volume?

19 A. -- pharmacy.

20 Q. And was the Eugene store a higher-volume or
21 lower-volume store, compared to the Florence store?

22 A. Eugene was lower, I believe.

23 Q. Were they close?

24 A. I think in the end they were, yes, after we
25 relocated.

1 MR. SABA: Objection; form.

2 THE WITNESS: Yes.

3 BY MS. LIVELY:

4 Q. Do you believe you have more responsibilities
5 at the Springfield store compared to the cashiers?

6 A. Yes, more responsibilities.

7 Q. Are there documents, maybe reports from
8 corporate, SYSMs, that you have access to that a cashier
9 would not have access to?

10 A. Yes. Cashiers don't have SYSM.

11 Q. Do cashiers get things like the P&L report?

12 A. No.

13 Q. Are there any other reports that you can think
14 of, that you get that a cashier would not get?

15 A. Time sheets.

16 Q. Anything else?

17 A. Umm, the -- like the CBT training, like the
18 list of who hasn't done them.

19 Q. Who gets that list?

20 A. Management, supervisors, ASMs, store managers.

21 Q. What about loss prevention reports; are there
22 any loss prevention reports that you get that a cashier
23 would not get?

24 A. No.

25 Q. What about shrink reports?

1 A. No.

2 Q. In what ways would you say your position as the
3 store manager is different from that of a cashier?

4 A. I have the ability -- or I do the schedule, and
5 I can approve payroll, and I have SYSM, and I have keys
6 to open and close the store. But other than that, the
7 cashiers have access to the other stuff.

8 Q. The cashiers don't have the ability to direct
9 work of you or other management members --

10 A. Correct.

11 Q. -- though, do they?

12 A. Correct.

13 Q. And what about the difference between your job
14 as a store manager and shift supervisors; you think
15 there are different duties that you have that a shift --
16 compared to a shift -- a shift supervisor?

17 A. Shift supervisors actually can do everything
18 that I do. They have the ability to create schedules
19 and approve payroll.

20 Q. Can they direct the work of ASMs or store
21 managers?

22 A. They can write a work list and put the names on
23 them.

24 Q. If a shift supervisor wrote a list and gave you
25 a task and you didn't want to do it, would you be

1 required to do it anyhow?

2 MR. SABA: Objection; form.

3 THE WITNESS: No.

4 BY MS. LIVELY:

5 Q. Do shift supervisors receive performance
6 evaluations?

7 A. Yes.

8 Q. Who writes those performance evaluations?

9 A. They do a self-appraisal and then I do the
10 appraisal.

11 Q. Can shift supervisors do appraisals of you?

12 A. No.

13 Q. Are there any reports that you receive that a
14 shift supervisor would not receive?

15 A. Not that I'm aware of.

16 Q. And how about your job as a store manager
17 compared to that of an ASM; are there any differences
18 that you can think of?

19 A. Not that I'm aware of.

20 Q. Do ASMs review store managers?

21 A. No.

22 Q. Do you review ASMs?

23 A. Yes.

24 Q. So that would be a difference, correct?

25 A. That would be a difference.

1 BY MS. LIVELY:

2 Q. So my question --

3 A. Sorry.

4 Q. I'm sorry. Go ahead.

5 A. Your question?

6 Q. No.

7 So my question is -- what I've asked you to
8 look at to help refresh your recollection is a field
9 performance, management hourly appraisal form, that
10 appears to be for someone named Steven Bletscher --

11 A. Uh-huh.

12 Q. -- who is a cashier. And there's -- there's
13 different boxes that get checked for rating.

14 A. Uh-huh.

15 Q. My question to you is, how do you know whether
16 to rate someone "needs development" or "competent" or
17 "above expectations"?

18 What -- what do you rely on to decide which box
19 to check?

20 A. Observation and working with them and...

21 Q. And did you try to be accurate in filling out
22 performance appraisal forms for your cashiers?

23 A. Yes.

24 Q. And for shift supervisors, would you have the
25 same answer, that you relied on your observations and

1 working with those individuals in order to fill out a
2 performance evaluation for them?

3 A. Yes.

4 Q. And how about for the assistant store managers;
5 what would you rely upon to know how to rate an
6 assistant store manager?

7 A. The same, working with them and observing them.
8 And those went up to district managers for
9 final approval.

10 Q. The ASM ones?

11 A. Uh-huh. Before you -- before they were given
12 to -- so I did the initial, the district manager made
13 changes, and then I could review it with the store
14 manager, or assistant at the time. So it was above my
15 head.

16 Q. For -- what about for the shift supervisor; did
17 those go to a district manager?

18 A. No.

19 Q. And for a --

20 A. Cashier?

21 Q. -- cashier, did those go to a district manager?

22 A. No.

23 Q. During the time that you've been a store
24 manager, did you ever recommend any employees for
25 promotion, whether from cashier to shift or from shift

1 to ASM or ASM to store manager?

2 A. Just last year I recommended a supervisor be
3 promoted, and I had to go through my district manager.

4 Q. Was that individual promoted?

5 A. Eventually.

6 Q. And who is that individual?

7 A. Lindsay Ogg.

8 THE DEPOSITION OFFICER: Spell that.

9 THE WITNESS: O-g-g.

10 BY MS. LIVELY:

11 Q. Other than Ms. Ogg, have there been any other
12 individuals who you've recommended for promotion?

13 A. Not for promotion, no.

14 Q. Have you ever recommended an individual for
15 demotion?

16 A. No.

17 Q. Do you know whether your district manager,
18 Ms. Horton, considered your recommendation in the
19 promotion of Ms. Ogg?

20 A. She considered it, but it took a couple months
21 for it to happen.

22 Q. Do you know why it took a couple months?

23 A. To my understanding, she was -- she didn't want
24 to because of her age.

25 Q. And where did you get that understanding?

1 A. From her.

2 Q. Who, her?

3 A. Denny.

4 Q. What did Ms. Horton say?

5 A. She was concerned about interview age.

6 Q. What did she say to you?

7 A. She was concerned because she was 21 years old.

8 Q. Was she concerned that she wasn't mature
9 enough?

10 A. Yes.

11 Q. But she eventually signed off on Ms. Ogg's
12 promotion; is that correct?

13 A. Yes.

14 Q. Are you responsible for handling employee --
15 strike that.

16 Since you've been a store manager at Rite Aid,
17 do you receive complaints from employees if they are
18 unhappy with something?

19 A. Yes.

20 Q. And are employees encouraged to bring
21 complaints forward to you?

22 A. Yes, they are.

23 Q. And are they encouraged to bring complaints
24 forward to assistant store managers as well?

25 A. Yes; to any management.

1 Q. And are you able to do a written warning and a
2 final written warning?

3 A. With the approval of HR, human resources. I
4 know for the final; but I'm not sure on the written --

5 Q. So --

6 A. -- the first written.

7 Q. Okay. So let me -- I'm going to try to get
8 this in pieces.

9 A. Okay.

10 Q. You would have the authority to do verbal
11 coaching on your own; is --

12 A. Correct.

13 Q. -- that correct?

14 And for first written, would you have the
15 authority to do that on your own?

16 A. I'm not sure on --

17 Q. Okay.

18 A. -- that one.

19 Q. For a final written warning, would you have
20 authority to do that on your own?

21 A. No. That has to go through human resources.

22 Q. And what about for termination?

23 A. Human resources.

24 Q. On a final written warning, would you give a
25 recommendation to human resources?

1 A. If I had the opportunity.

2 Q. Have there been any situations where you've
3 provided human resources with a final written warning or
4 asked that a final written warning be completed for an
5 employee?

6 A. I have not completed a final written warning.
7 I did have a situation where I had a technician that --
8 a pharmacy technician that we had problems with. She
9 actually ended up calling HR and starting an
10 investigation.

11 Q. Okay.

12 A. And she was not terminated, even though I
13 recommended it.

14 Q. And who was that employee?

15 A. Jane Saul, S-a-u-l.

16 Q. Have there ever been situations where you have
17 recommended an employee for termination and they were
18 terminated?

19 A. I had an employee let -- or terminated. It was
20 violation of company policy. But I still had to go
21 through HR to get it approved.

22 Q. Did you draft the recommendation for -- strike
23 that.

24 Was there a recommendation for termination
25 drafted?

1 A. Just phone calls.

2 Q. Okay.

3 A. There might have been a SYSM.

4 Q. Do you remember that employee's name?

5 A. Colby Hale.

6 Q. Did HR call you for any follow-up on the
7 recommendation for termination?

8 A. I don't understand.

9 Q. If there was either a SYSM sent or something
10 written, where you said, "I recommend terminating this
11 person," was there some sort of follow-up, or did HR
12 just say, "Okay. Go ahead and terminate"?

13 How did that work?

14 A. I sent them a SYSM --

15 Q. Okay.

16 A. -- with the information of what happened. And
17 I believe they -- I think she called me the next day --
18 I can't be certain on the thing -- and told me that he
19 had to be terminated.

20 Q. And then did you actually terminate the
21 individual?

22 A. Yes. I sent in the pay request.

23 Q. Do you have any information to show that human
24 resources failed to consider your recommendation in
25 terminating Mr. Hale?

1 A. No.

2 Q. As the store manager for Rite Aid, have you had
3 any authority to decide what sort of product should be
4 bought for the store?

5 A. As far as what we sell?

6 Q. Yes.

7 A. I don't -- no, I don't have authority to do
8 that.

9 Q. As a store manager for Rite Aid, have you had
10 any authority to determine the quantity of items to
11 order?

12 A. Yes, through corporate ad buy.

13 Q. Tell me what that is.

14 A. It's, on our computer system it shows a picture
15 of what we're going to sell in the ad --

16 Q. Uh-huh.

17 A. -- and then it shows you the different
18 products. And you put in how many you think you're
19 going to sell. It doesn't show you everything that's on
20 sale. They pick what they think we need to buy.

21 I don't have the authority to order my store.
22 If I want to order something other than what's on that
23 ad buy, I have to go through my district manager and she
24 has to approve it.

25 Q. Have you had that happen, where you felt

1 something needed to be ordered and you asked your DM for
2 it and she approved it?

3 A. I have to order things weekly for things we run
4 out of for customers. And it has to be sent to her
5 assistant, her DMA, and they have to order it for me.

6 Q. Do you have any information that your district
7 manager does not consider your recommendation for what
8 should be bought pursuant to that process?

9 MR. SABA: Objection; form.

10 THE WITNESS: I -- I don't.

11 BY MS. LIVELY:

12 Q. Have you ever -- oh, I'm sorry.

13 Going back to the ad buy, how do you
14 determine -- my understanding is you can determine the
15 amount of whatever those certain list of products are.
16 How do you determine what amount should be bought?

17 A. It's based -- let's see. How do I say this?

18 It's how many you want to have in your store at
19 the time of the sale. And it has in there how much you
20 sold the last time it was on sale, what your average
21 movement is. So corporate's loaded all that into the
22 system, and you just do it.

23 Q. Do you have some discretion, though, to decide
24 whether you want 25 or 45 of something?

25 A. I put that -- yes, I put that in there.

1 one of your daily task sheets?

2 A. Yes.

3 Q. And that would be assigned by either you, an
4 ASM or a shift supervisor?

5 A. Correct.

6 Q. Do you do any store-level advertising or
7 marketing that's not from corporate?

8 A. No.

9 Q. When a new employee is hired, is there certain
10 paperwork that has to be completed by the new hire that
11 management assists with?

12 A. A new hire is signed on to the computer. They
13 fill out all their paperwork, the I-9, the W-4s, the new
14 hire forms. And then it goes into a queue for
15 management to look at and approve, and then it's, I
16 believe, faxed in. It's all changed again.

17 Q. When you say it's queued in for management to
18 look at and approve, which management, what level
19 management?

20 A. I believe it's assistant manager and store
21 manager. Shift supervisors, no.

22 Q. Do you need to seek permission from your
23 district manager before you interview individuals for
24 those first pass interviews?

25 A. No.

1 Q. Do you submit your schedule that you've come up
2 with to your district manager before it's posted or
3 presented to employees at the store level?

4 A. No, but it has to be in the system before
5 Monday at 5:00, so that they can look at it and
6 recommend changes to it.

7 Q. The district manager or the employee?

8 A. District manager.

9 Q. Has it been your experience that Ms. Horton has
10 commonly changed the schedule?

11 A. Asked us to change it.

12 Q. Is that something that happens regularly?

13 A. If it's over budget, over schedule.

14 Q. How often, on a -- there's 52 weeks in a year.
15 What percentage, would you say, of the time you have had
16 an over-scheduled budget that Ms. Horton has asked be
17 changed?

18 A. It's a guess. Three or four.

19 Q. Three or four schedules or three or four
20 percent?

21 A. Oh. What were you asking?

22 Q. I was --

23 A. Schedules?

24 Q. -- asking what percent?

25 A. Percent.

1 Q. Of 52, weeks, are you saying --

2 A. Probably maybe 10 percent.

3 Q. After the schedule is posted for the employees,
4 do you have -- have you had situations happen where some
5 employee comes back later on and says, "Oh, I see I'm
6 scheduled to go on Saturday 8:00 to 5:00, but I've got a
7 wedding to go to."

8 A. Uh-huh.

9 Q. "Can I change that?"

10 A. Uh-huh.

11 Q. Does that happen?

12 A. It has.

13 Q. And do you have the authority to change the
14 schedule, so long as you stay within budget?

15 A. Yes, as long as I stay within the budget.

16 Q. Would an ASM have the authority to change the
17 schedule, so long as they stay within budget?

18 A. Yes.

19 Q. Would they need to go to you for approval?

20 A. They would let me know about it.

21 Q. And would a shift supervisor have the authority
22 to change a schedule, assuming it stayed within budget?

23 A. Yes.

24 Q. And would they need approval from you before
25 making that change?

1 A. He was Payless.

2 Q. Okay.

3 A. Sorry.

4 Q. That's all right.

5 A. That's all I can remember.

6 Q. And were their management styles different?

7 Were there any -- was one more hands on, hands
8 off, micromanager, not micromanager?

9 Any differences in management style that you
10 observed between the three of them?

11 A. No. They were all -- I don't recall. I'm --

12 Q. Do you get along with Ms. Horton?

13 A. I do.

14 Q. How often did Ms. Horton visit your store when
15 you were at Florence?

16 A. I don't recall how often.

17 Q. More than once a month?

18 A. Oh, no. Less than once a month.

19 Q. Less than once every two months or somewhere in
20 between?

21 A. I would say once every three months.

22 Q. Okay. And where is Ms. Horton based? Do you
23 know?

24 A. Albany.

25 Q. And how about your store in Eugene; how often

1 did Ms. Horton visit when you were at the store in
2 Eugene?

3 A. The same, about once every three months.

4 Q. And how about now, at Springfield?

5 A. About the same.

6 Q. And how would you describe Horton's management
7 style?

8 A. I don't know how to explain it. I don't know.

9 Q. Would you consider her to be a hands-on or
10 hands-off manager?

11 A. She's a hands-on, through corporate
12 communication.

13 Q. Is that SYSMs generally?

14 A. SYSM, controlling of the budget.

15 Q. What does that mean, "controlling of the
16 budget"?

17 A. Insists that you make the budgeted plan hours.

18 Q. Have you ever not made the budgeted plan hours?

19 A. Yes. But I've not scheduled to miss it. Like
20 I've scheduled to make the plan. But there are
21 circumstances at times that required to go over.

22 Q. And how --

23 A. Or the sales weren't there to make it, so you
24 didn't make your plan.

25 Q. And how did Ms. Horton respond?

1 A. She responds in SYSM; just, it's a blanket
2 SYSM.

3 Q. What do you mean, "a blanket SYSM"?

4 A. She sends a SYSM out to the whole district for
5 sales and budget.

6 Q. And is she telling people, "You need to improve
7 your sales" or --

8 A. Improve your budget and make your plan and cut
9 your overtime.

10 Q. Does she offer suggestions on how to do that?

11 A. Not to my knowledge.

12 Q. The Florence store, is that in a rural, urban
13 or suburban area?

14 A. I guess it would be considered rural. I can't
15 say that word.

16 Q. There are not a lot of houses around or other
17 businesses around or -- I can't picture it.

18 A. I don't know what's considered suburban, rural.
19 I don't -- I don't know what the differences are.

20 Q. Rural would be where there's not a lot of -- in
21 my opinion, rural would be where there's not a lot of
22 houses or other buildings around; it's kind of just a
23 store, kind of on its own, country sort of atmosphere.

24 Suburban would be, you know, houses, maybe some
25 schools around.

1 Need to work on ad goods prior to
2 the ad start and while ordering the
3 weekly ad.

4 Do you know what that means?

5 A. The weekly ad buy that we were talking about
6 earlier, and work on ad goods prior to the ad start
7 date.

8 Q. Does that mean you were supposed to do
9 something with ad goods?

10 I'm sorry, I just --

11 A. Order.

12 Q. -- don't know what that means.

13 A. Order, if we don't have it in hand -- on hand.

14 Q. And in the next box down, which is "Drive
15 Sales," it states:

16 Front end sales were 6.8 percent
17 below plan and 6 percent below last year;
18 script growth down 1.2 percent to plan.

19 What is script growth?

20 A. How many scripts we do.

21 Q. Prescriptions?

22 A. Prescriptions.

23 Q. And do you know why prescriptions were on
24 your -- something dealing with prescriptions were on
25 your performance evaluation as opposed to a pharmacist's

1 performance evaluation?

2 A. They combined the front end and the pharmacy.

3 Q. For sales?

4 A. For sales and plan.

5 Q. And so then are you ultimately responsible for
6 making sure the sales target gets met for the front end?

7 A. For the front end?

8 Q. Yes.

9 A. Repeat that.

10 Q. Sure. And maybe it's not a good question.

11 I'm just trying to understand why -- why a
12 script growth would be on your performance evaluation.
13 Is it because the script growth -- that you were
14 ultimately responsible somehow for prescription sales in
15 the store or -- or meeting plan?

16 I'm just not understanding why it's on your
17 performance evaluation.

18 A. As store managers, we're supposed -- we're to
19 help the pharmacy increase their script count.

20 Q. And so did you -- did you have some
21 understanding that as the store manager you had some
22 responsibility to assist the pharmacy in doing that?

23 MR. SABA: Objection; form.

24 THE WITNESS: No. When I became a store
25 manager, I did not realize that I had to help with the

1 pharmacy growth.

2 BY MS. LIVELY:

3 Q. At -- excuse me. As of May 12th, 2009, did you
4 understand that you needed to help the pharmacy with
5 growth?

6 A. I don't know how to answer that. I don't.

7 Q. Do you know whether, as a store manager in
8 2009, you understood that you had some responsibility
9 with regard to script growth?

10 A. Yes, I -- I understand that I am to help the
11 pharmacy in what they need to do to increase their
12 script growth.

13 Q. And what, if anything, did you do to help the
14 pharmacy to increase its script growth after receiving
15 Exhibit 5?

16 A. I don't recall doing anything specific.

17 Q. Then the next item down, under "Be Profitable,"
18 it states:

19 NBT well below last year and below
20 plan.

21 What is NBT?

22 A. I believe it's net before taxes.

23 Q. And then it states:

24 Sandy has done a good job
25 controlling front end payroll to her

1 Q. Did you have your ASMs participate in any way
2 in the performance review process for shift supervisors?

3 A. No.

4 Q. How much time per week did you spend observing
5 your employees to make sure that they were working
6 properly and doing their jobs?

7 MR. SABA: Objection; form.

8 THE WITNESS: I can't give you a time on what
9 was spent. You see something and you deal with it.
10 There's no time.

11 BY MS. LIVELY:

12 Q. So is it just on an ongoing, as-needed basis?

13 A. As you're -- yeah -- doing tasks and you see
14 something, somebody not doing something, then you talk
15 to them.

16 Q. During the time that you have been a store
17 manager, have you ever identified any sales associates
18 that you thought had management potential?

19 A. Yes. I recommended one for promotion.

20 Q. And was that Ms. Ogg?

21 A. Ogg, uh-huh.

22 Q. Did you create any sort of procedure or rule in
23 your store, where employees needed to get vacation or
24 time off requests to you within a certain period of
25 time, like you need to ask for time off two weeks ahead

1 of time, or three days or two days, anything like that?

2 A. Not that I'm aware, no.

3 Q. If an employee were to need time off or want to
4 take time off for a vacation, would they go to you for
5 that, or do they fill out some sort of slip, or what?

6 A. Just they would come to me.

7 Q. And then how -- how does this get input into
8 the computer?

9 Do they just get marked out on certain days?

10 A. It's done doing the daily schedule and what was
11 StaffWorks or Work Force Management.

12 Q. And who would have the authority to schedule an
13 employee out on vacation, in the store?

14 A. Whoever is doing the schedule, which -- me or
15 assistants. Shift supervisors are -- they can do
16 schedules, also.

17 Q. Do you currently have your shift supervisors
18 doing scheduling?

19 A. I do not, no.

20 Q. Have you ever had your shift supervisors do
21 scheduling for you, when you've been store manager?

22 A. No.

23 Q. Is there a process that you have used to
24 forecast scheduling needs in your store?

25 A. No. That's done above, corporate or

1 district -- I don't know who does it.

2 Q. As far as you know, you don't have any -- any
3 input into that?

4 A. I don't have input into it.

5 Q. And what sort of -- strike that.

6 I think we talked earlier that sometimes you
7 may need to adjust an employee's schedule after the
8 schedule has been printed or come out.

9 In what sort of circumstances have you needed
10 to adjust the schedule?

11 A. Somebody calls in sick or there's a family
12 emergency. Most -- mostly it's just sick.

13 Q. And in that situation, do you have the
14 authority to call another employee to see if you can get
15 coverage?

16 A. Yes, I do.

17 Q. And does anyone else in the store have that
18 authority?

19 A. Assistants and supervisors.

20 Q. If for some reason your store was experiencing
21 more business than expected, would you have the
22 authority to call another employee in?

23 A. If it was within the budgeted hours.

24 Q. Yes.

25 A. Only at that time.

1 I'm sorry.

2 Q. I'm sorry.

3 A. That was my answer.

4 Q. I thought it was a question.

5 A. Yes.

6 Q. So let's try this again.

7 If your store was experiencing more business
8 than expected, would you have the authority to call
9 another employee in?

10 A. Yes, as long as it's kept within the budgeted
11 hours.

12 Q. And if you knew you were going to go over the
13 budgeted hours and you thought you still needed more
14 coverage, what would you do?

15 A. I would have to call and ask for approval from
16 the district manager.

17 Q. Have you ever had to do that?

18 A. Not that I recall.

19 Q. As a store manager, would you agree that you
20 were responsible for enforcing company policy?

21 A. Yes; making sure people are following them,
22 yes.

23 Q. Have you ever had to discipline an employee for
24 failure to follow company policy?

25 A. Yes.

DECLARATION UNDER PENALTY OF PERJURY

I, SANDRA LYNNE MCCARTHY, do hereby certify under penalty of perjury that I have read the foregoing transcript of my deposition taken August 12, 2011; that I have made such corrections as appear noted herein, in ink, initialed by me; that my testimony as contained herein, as corrected, is true and correct.

DATED this _____ day of _____, 2011, at _____, California.

SANDRA LYNNE MCCARTHY

Exhibit TT

Yatram Indergit, et al. v. Rite Aid Corporation, et al.
Anthony McGillivray

1:08-CV-09361-PGG-HBP
August 11, 2011

Page 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

YATRAM INDERGIT, ON BEHALF OF
HIMSELF AND OTHERS SIMILARLY
SITUATED,

PLAINTIFF,) CASE NO.

) 1:08-CV-09361

vs.)

) -PGG-HBP

RITE AID CORPORATION, RITE AID OF
NEW YORK, INC., AND FRANCIS OFFOR AS
AIDER & ABETTOR,

DEFENDANTS.)

DEPOSITION OF ANTHONY MC GILLIVRAY
TAKEN THURSDAY, AUGUST 11, 2011
LOS ANGELES, CALIFORNIA

Reported by Audra E. Cramer, CSR No. 9901

1 he took over.

2 Q. Did Dave ask you whether Mike was ready to take
3 his own store?

4 A. I'm not sure. Probably.

5 Q. If he had asked you, would you have said that
6 he was ready?

7 A. Yes.

8 Q. And is that because you had trained him on all
9 aspects of being a store manager?

10 A. Yes.

11 Q. Did you train him on the schedule?

12 A. Yes.

13 Q. Profit and loss?

14 A. Yes.

15 Q. Business daily reports?

16 A. Yes.

17 Q. Managing inventory?

18 A. Yes.

19 Q. Disciplining associates?

20 A. Yes.

21 Q. Interviewing and hiring processes?

22 A. When it was approved.

23 Q. You trained him on the process by which a store
24 manager can hire someone though; right?

25 A. Yes.

1 Q. Did you train him on ordering?

2 A. Yes.

3 Q. And ad ordering?

4 A. I don't believe we had the system at that time.

5 Q. So ad ordering was something that had not yet
6 come in?

7 A. Correct.

8 Q. At that point at 6263, were you writing the
9 schedule by hand, or were you using Staffworks?

10 A. Staffworks.

11 Q. Did you train Mike on how to check in vendors?

12 A. Yes.

13 Q. Did you train Mike in the profit planner?

14 A. Yes.

15 Q. Did you train him in the category sales report?

16 A. Yes.

17 Q. And did you train him in register audits?

18 A. I don't recall. I don't recall if we did those
19 at that time.

20 Q. Any other training that you provided Mike that
21 I've missed?

22 A. Not that I recall.

23 Q. When Mike came in to be trained, would he
24 shadow you throughout the day, or would you meet with
25 him at specific times to talk about the various

1 managerial processes that he had to learn?

2 A. Combination.

3 Q. By the end of his training, could you trust him
4 to run a shift?

5 A. Yes.

6 Q. At the beginning of his training, could you
7 trust him to run a shift?

8 A. Shortly into it.

9 Q. Not right away, but soon thereafter?

10 A. Yes.

11 Q. Was Mike an outside hire, or was he promoted
12 from within Rite Aid?

13 A. Outside hire.

14 Q. So he had to learn Rite Aid processes in their
15 entirety; right?

16 A. Yes.

17 Q. Did 6263 sell alcohol?

18 A. Yes.

19 Q. Did it sell beer and wine?

20 A. Yes.

21 Q. Did it sell hard liquor?

22 A. Yes.

23 Q. So obviously it had a liquor license.

24 A. Yes.

25 Q. And associates had to go through training

1 A. Yes.

2 Q. That was part of the SMILE-RAPTAR program?

3 A. Yes.

4 Q. Which was aimed at improving employee morale?

5 A. Yes.

6 Q. And based on your assessment of how the
7 employees were doing, would you hand out SMILE or RAPTAR
8 cards?

9 A. Yes.

10 Q. At 6263 did truck come during business hours or
11 overnight?

12 A. The truck -- it would be during business hours.

13 Q. At 5846 did truck come during business hours or
14 overnight?

15 A. Business hours.

16 Q. 4063?

17 A. Business hours most of the time. Sometimes
18 early in the morning before opening.

19 Q. And 5297?

20 A. Most of the time, actually came before store
21 opening.

22 Q. And all of these stores received the truck
23 deliveries in the doors that were in the back of the
24 store?

25 A. Yes.

1 Q. At no store that you ran did you have to bring
2 in the merchandise through the front end where the
3 customers were coming in?

4 A. No.

5 Q. And you'd try to schedule all your store
6 employees on truck day; right?

7 A. Yes.

8 Q. And when the store receives a truck outside of
9 regular business hours, would you schedule yourself to
10 meet it?

11 A. Yes.

12 Q. And you would schedule as many employees as
13 possible to bring the product into the store and stock
14 it; right?

15 A. Yes.

16 Q. And so would you run a crew of employees to
17 complete that task as quickly as possible?

18 A. Yes.

19 Q. You tried to have the product off the truck, in
20 the store and on the shelves within 24 hours?

21 A. Yes.

22 Q. How many hours a week did you work as a
23 store manager in 2005?

24 MS. SCOTT: Objection. Form.

25 THE WITNESS: I don't recall.

1 BY MR. SCOTT:

2 Q. What was the average week for you in terms of
3 hours worked in 2005?

4 MS. SCOTT: Objection. Form.

5 THE WITNESS: It varied. Minimum of 50. I
6 don't recall.

7 BY MR. SCOTT:

8 Q. What would the maximum be?

9 A. 70.

10 Q. What did it vary based on?

11 A. Help in the store. What was going on.
12 Inventory. Just busy. Things like that.

13 Q. 2006. What's the range of hours worked per
14 week?

15 MS. SCOTT: Objection. Form.

16 THE WITNESS: Same.

17 BY MR. SCOTT:

18 Q. 2007?

19 MS. SCOTT: Objection. Form.

20 THE WITNESS: Same.

21 BY MR. SCOTT:

22 Q. 2008?

23 MS. SCOTT: Objection. Form.

24 THE WITNESS: Started getting more into
25 the 55-60 range plus.

1 BY MR. SCOTT:

2 Q. 2009?

3 MS. SCOTT: Objection. Form.

4 THE WITNESS: Same. Around 55, 60 average.

5 BY MR. SCOTT:

6 Q. 2010?

7 MS. SCOTT: Objection. Form.

8 THE WITNESS: Started averaging about 60 to 70.

9 BY MR. SCOTT:

10 Q. Why was that?

11 A. No help in the store.

12 Q. As we discussed earlier, your labor budget was
13 decreased.

14 A. Yes.

15 Q. And you resigned in 2011?

16 A. Yes.

17 Q. What month?

18 A. March.

19 Q. And in the two months that you worked as a
20 store manager in 2011, how many hours a week did you
21 work?

22 MS. SCOTT: Objection. Form.

23 THE WITNESS: 60 to 70.

24 BY MR. SCOTT:

25 Q. As a store manager did you clock in but not

1 clock out.

2 A. In Washington, yes. In California, no, we
3 didn't. We weren't required to punch.

4 Q. Do you have any record in your possession -- I
5 don't mean here, but in your possession generally --
6 that would show the hours that you worked at Rite Aid?

7 A. I don't know.

8 Q. The hours a week that you worked, would those
9 increase in 5297 at the holiday season?

10 A. Yes.

11 Q. And during lower-volume seasons, if it wasn't
12 inventory, you might work less?

13 MS. SCOTT: Objection. Form.

14 THE WITNESS: If there was staffing, yes.

15 MR. SCOTT: I'm going to hand you what's been
16 marked as Exhibit 21.

17 (Whereupon, Exhibit 21 was marked
18 for identification.)

19 BY MR. SCOTT:

20 Q. Exhibit 21 is a job description for the
21 position of store manager at Rite Aid; right?

22 A. Yes.

23 Q. Have you seen this document before?

24 A. Yes.

25 Q. And have you seen this document after having

1 Q. What percentage of your time did you spend as a
2 manager at Rite Aid completing nonmanagerial tasks?

3 MR. SCOTT: Object to form.

4 THE WITNESS: Towards the end it was close to
5 60 percent, maybe more.

6 BY MS. SCOTT:

7 Q. By "towards the end," do you mean 2009? 2010?

8 A. Late 2009, most of 2010, yes.

9 Q. Actually, let's just go year by year, and you
10 can give me on average the percentage of time that you
11 spent doing nonmanagerial tasks.

12 In 2005, on average, how much time did you
13 spend doing nonmanagerial tasks?

14 MR. SCOTT: Object to form.

15 THE WITNESS: It was probably about 50/50.

16 BY MS. SCOTT:

17 Q. In 2006 how much time did you spend
18 percentage-wise doing nonmanagerial tasks?

19 THE WITNESS: Probably about 50/50.

20 MR. SCOTT: I'm going to withdraw my objection
21 to the first one of these questions.

22 BY MS. SCOTT:

23 Q. In 2007 what percentage of time did you spend
24 doing nonmanagerial tasks as a store supervisor?

25 MR. SCOTT: Object to form.

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1 You mean store manager?

2 MS. SCOTT: Oh, sorry. Store manager, yes.

3 THE WITNESS: 2007 we probably went up to about
4 55 percent nonmanagerial.

5 BY MS. SCOTT:

6 Q. In 2008 what percentage of time did you spend
7 doing nonmanagerial tasks as a store manager?

8 A. Probably still around 55.

9 Q. In 2009?

10 A. It started getting up into the 60-plus range.

11 Q. And the portion of 2010 that you worked as a
12 store manager at Rite Aid, what percentage of your time
13 did you spend doing nonmanagerial tasks?

14 A. 60-plus.

15 Q. Why did you have to do nonmanagerial tasks as a
16 store manager at Rite Aid?

17 MR. SCOTT: Object to form.

18 THE WITNESS: The labor constraints made it so
19 that the manager had to pick up the slack for not having
20 personnel there to do those tasks.

21 BY MS. SCOTT:

22 Q. Did the labor constraints make it difficult to
23 delegate nonmanagerial tasks to store employees?

24 MR. SCOTT: Object to form.

25 THE WITNESS: Yes. Hard to delegate when

1 there's nobody to delegate to.

2 BY MS. SCOTT:

3 Q. If you'll look at the exhibit that's been
4 marked as 21, which is the store manager job description
5 for Rite Aid, on that exhibit do you see any
6 nonmanagerial tasks listed?

7 A. No.

8 Q. Did performing these nonmanagerial tasks affect
9 how you were able to run the store at Rite Aid as a
10 store manager?

11 MR. SCOTT: Object to form.

12 THE WITNESS: Yes. It was hard to focus on the
13 managerial tasks when I was out on the floor doing
14 freight or cashiering, straightening the store,
15 whichever. Couldn't review the P&L and things like
16 that.

17 BY MS. SCOTT:

18 Q. Was it more difficult to supervise your staff
19 when you were doing nonmanagerial tasks as a
20 store manager?

21 MR. SCOTT: Object to form.

22 THE WITNESS: Yes.

23 BY MS. SCOTT:

24 Q. Did Rite Aid expect you to still supervise your
25 staff while you were having to complete nonmanagerial

1 tasks?

2 A. Yes.

3 Q. Did the assistant store managers at Rite Aid
4 also complete nonmanagerial tasks?

5 A. Yes.

6 Q. Did they complete nonmanagerial tasks at every
7 store that you were either an assistant store manager or
8 store manager at at Rite Aid?

9 A. Yes.

10 Q. Would you look at the exhibit that has been
11 marked 22, the Rite Aid job description of assistant
12 store manager.

13 A. Yes.

14 Q. Can you tell me if anywhere on there you see
15 nonmanagerial tasks listed on that job description.

16 A. I don't believe so, no.

17 Q. And you might have testified to this earlier,
18 so I apologize if it's already on the record and if
19 you've already been asked this: Were you ever
20 compensated on an hourly basis as an assistant store
21 manager at Rite Aid?

22 A. Yes.

23 Q. Were you compensated on a salaried basis as an
24 assistant store manager?

25 A. Yes.

1 Q. Can you tell me the time periods where you were
2 hourly and the time frame in which you were salaried as
3 an assistant store manager?

4 A. I don't remember the years. I would estimate
5 that 2000 to 2001 or '2 as salary, and then from that
6 point on until I was promoted, as an hourly.

7 Q. Did your job duties change as an assistant
8 store manager when you went from salaried to hourly?

9 A. No.

10 Q. Are you aware of why your salary changed from
11 salaried to hourly as an assistant store manager?

12 MR. SCOTT: Object to form.

13 THE WITNESS: Rite Aid lost a class action
14 lawsuit in the state of California.

15 BY MS. SCOTT:

16 Q. And it was after that class action that your
17 compensation structure changed?

18 A. Yes.

19 Q. You testified about an assistant store manager
20 named Goldie earlier. You said she also went from
21 salaried as an assistant store manager to an hourly
22 assistant store manager; right?

23 A. Yes.

24 Q. Did her job duties change at all when she went
25 from a salaried assistant store manager to an hourly

1 assistant store manager?

2 A. No.

3 Q. Was she completing nonmanagerial tasks as an
4 assistant store manager?

5 MR. SCOTT: Object to form.

6 THE WITNESS: Yes.

7 BY MS. SCOTT:

8 Q. I want to discuss with you assistant store
9 managers -- actually, strike that.

10 I want to discuss with you the hourly
11 compensation of the assistant store managers compared to
12 salaried compensation of assistant store managers while
13 you were at Rite Aid.

14 When the compensation went to hourly, were
15 assistant store managers paid overtime?

16 A. Yes. The way -- yes and no. The way they did
17 it to work out the amount, when I was an hourly
18 assistant, I was paid 40 hours of regular time, 5 hours
19 of overtime.

20 Q. Were you ever allowed to work more than
21 those 45 total hours?

22 A. It was frowned upon, but yes.

23 Q. If you did work over those 45 hours, would you
24 be paid that additional overtime?

25 A. Yes.

1 Q. Were you ever paid overtime for the hours that
2 you worked over the 45 hours as a store manager?

3 A. No.

4 Q. Were you ever paid overtime for the hours that
5 you worked over 45 hours as a salaried assistant store
6 manager?

7 A. No.

8 Q. Who made the final decision regarding firing
9 staff?

10 MR. SCOTT: Object to form.

11 THE WITNESS: Generally, terminations had to be
12 approved through HR.

13 BY MS. SCOTT:

14 Q. And who set the store budget for Rite Aid?

15 A. Corporate.

16 Q. Were you able to change that budget at all if
17 you thought, as a store manager, the budget needed to be
18 changed?

19 A. No.

20 Q. Did you ever try to request more hours for your
21 budget as a store manager at Rite Aid?

22 A. Yes.

23 Q. What happened when you requested those
24 additional hours?

25 A. I was told the budget is the budget.

1 Q. You testified earlier that you now are
2 currently an assistant manager at Bi-Mart. Can you
3 compare your duties as an assistant manager at Bi-Mart
4 with your duties as a store manager at Rite Aid?

5 MR. SCOTT: Object to form.

6 THE WITNESS: As an assistant for Bi-Mart, my
7 responsibilities are maintaining store in-stocks and
8 driving sales through that and ensuring that the
9 department leads and the department personnel are
10 completing their tasks and getting their freight done on
11 time and completing their counts.

12 BY MS. SCOTT:

13 Q. Do you have more autonomy as an assistant
14 manager at Bi-Mart than you did as a store manager at
15 Rite Aid?

16 A. Yes. We can merchandise end caps however we
17 feel is necessary for sales. More of my job is
18 delegating to the department personnel. And we are able
19 to order specific things for -- we can order specific
20 things for a customer, excess quantities or an item for
21 the area that we're in.

22 Q. You mentioned delegating as part of your duties
23 as an assistant manager at Bi-Mart. Do you now have
24 enough staff to delegate nonmanagerial tasks to?

25 A. Yes.

1 MR. SCOTT: Object to form.

2 BY MS. SCOTT:

3 Q. Do you, as a result, complete fewer
4 nonmanagerial tasks than you did as a store manager at
5 Rite Aid?

6 MR. SCOTT: Object to form.

7 THE WITNESS: Yes.

8 BY MS. SCOTT:

9 Q. Do you complete more managerial tasks than you
10 did as a store manager at Rite Aid?

11 MR. SCOTT: Same objection.

12 THE WITNESS: Yes.

13 BY MS. SCOTT:

14 Q. Do you feel you're more able to control
15 profitability as an assistant manager at Bi-Mart than
16 you did as a store manager at Rite Aid?

17 MR. SCOTT: Object to form.

18 THE WITNESS: Yes. We have specific abilities
19 to bring in product to fill the store. We can bring in
20 specials and order higher quantities to build displays
21 if we have a product that is selling really well.

22 BY MS. SCOTT:

23 Q. Could you not do that as a store manager at
24 Rite Aid?

25 MR. SCOTT: Object to form.

1 THE WITNESS: No.

2 BY MS. SCOTT:

3 Q. If you'll look at Exhibit 20 for me.

4 A. Okay.

5 Q. It is a Rite Aid weekly schedule for May 2,
6 2009. Do you see that?

7 A. Yes.

8 Q. And for your weekly total that week, it says
9 that you were working 50 hours. Do you see that?

10 A. Yes.

11 Q. I know that you probably don't remember exactly
12 the number of hours that you worked on this week, but in
13 general, if you scheduled yourself for 50 hours, did it
14 mean that you actually worked 50 hours?

15 A. No. The system was designed to automatically
16 schedule us 50 hours a week. If you scheduled yourself
17 more, it decreased the payroll for other staff. So if
18 you were going to work Friday or Saturday, as I'm
19 scheduled off on these days, then I would just come in
20 and work those days.

21 Q. And did Rite Aid keep track of those hours?

22 MR. SCOTT: Object to form.

23 THE WITNESS: No.

24 BY MS. SCOTT:

25 Q. Just as an example, if you'll look at Sunday,

1 April 26, 2009, it looks like you're scheduled for
2 7:00 o'clock a.m. until 5:00 o'clock p.m. --

3 A. Yes.

4 Q. -- and Linda James is scheduled to open with
5 you at 7:00 o'clock a.m.

6 Do you see that?

7 A. Yes.

8 Q. What would happen if Linda didn't come in at
9 7:00 o'clock?

10 A. I would be alone until 9:00 a.m. unless I could
11 find somebody to replace her.

12 Q. And if you couldn't find someone to replace
13 her, would you be alone in the store?

14 MR. SCOTT: Object to form.

15 THE WITNESS: Yes.

16 BY MS. SCOTT:

17 Q. You testified about your vacation earlier, and
18 you mentioned during that testimony that you didn't take
19 all of your vacation except for, I believe, one year; is
20 that correct?

21 A. I believe so.

22 Q. Why didn't you take all of your vacation in the
23 years that you didn't take all of your vacation?

24 A. My assistant was not performing to standards,
25 and I was not able to leave the store without coming

1 STATE OF CALIFORNIA)
2 COUNTY OF LOS ANGELES) SS.

3

4

5 I, ANTHONY MC GILLIVRAY, hereby certify
6 under penalty of perjury under the laws of the State of
7 California that the foregoing is true and correct.

8 Executed this _____ day of

9 _____, 2011, at

10 _____, California.

11

12

13

14

ANTHONY MC GILLIVRAY

15

16

17

18

19

20

21

22

23

24

25

Exhibit UU

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Page 1

IN THE UNITED STATES DISTRICT COURT
OF THE SOUTHERN DISTRICT OF NEW YORK

YATRAM INDERGIT, on)
behalf of himself)
and others similarly)
situated,)
)
Plaintiff,) Civil Action File
) No. 08Civ.9361
vs.) (PGG) (HBP)
)
RITE AID)
CORPORATION, RITE)
AID OF NEW YORK,)
INCORPORATED, and)
FRANK OFFOR as Aider)
& Abettor,)
)
Defendants.)

- - -

Deposition of CHRISTOPHER O'BRIEN
(Taken by Defendants)
Atlanta, Georgia
August 2, 2011

Reported by: Lynne C. Fulwood
Certified Court Reporter

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1 A No, I have not.

2 Q Were you supervising more employees
3 as a store manager at Wild Oats than you have
4 as a store manager at Rite Aid?

5 A Yes.

6 Q When you were store manager at Fresh
7 Market, how was your store staffed? How many
8 -- were there assistant managers?

9 A Yes, three assistants.

10 Q Were there department managers?

11 A Yes.

12 Q If I'm getting the titles wrong, just
13 let me know.

14 A That's fine. There was also --

15 Q How many supervisors below the
16 department manager level?

17 A Yes.

18 Q What were they called?

19 A Assistant department managers.

20 Q Then as a district manager at Fresh
21 Market, how many stores were you responsible
22 for?

23 A Three and then one building at the
24 time.

25 Q As a store manager at Fresh Market,

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1 did you believe that you had overall
2 responsibility for your store?

3 MS. REHMAN: Objection to form;
4 you can answer.

5 A At Fresh Market?

6 Q Yes.

7 A Yes.

8 Q At Rite Aid as a store manager, do
9 you believe that you had overall responsibility
10 for your store?

11 MS. REHMAN: Objection to form;
12 you can answer.

13 A No.

14 Q Why not?

15 A Because you don't really have a say
16 in what goes on in your store.

17 Q Any other reason?

18 A I mean, you have to ask permission
19 for pretty much anything you want to do outside
20 of, you know, how it's laid out.

21 Q So what it is that you felt at Rite
22 Aid as a store manager you didn't have a say in
23 with respect to the store that you were
24 managing?

25 A A lot of things.

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1 Q Tell me what things.

2 A If I wanted to hire somebody, I had
3 to go above me. If I didn't -- if what was on
4 an end cap, if I wanted to impact sales, I
5 couldn't make decisions that would help me
6 impact sales because if this item is on the end
7 cap and that's where it is, I can't move it.
8 If I want to get something fixed, I have to go
9 through corporate and then let them make a
10 decision as to whether or not it should be
11 fixed or not.

12 Q Anything else?

13 A No. That's all I have.

14 Q And then you said at Rite Aid as a
15 store manager you have to ask permission, what
16 did you mean by that?

17 A Depending on what it is, you make a
18 phone call, whether to your boss or to, you
19 know, corporate maintenance themselves.

20 Q And that's about getting something
21 fixed in the store?

22 A Getting something fixed; if I wanted
23 to hire somebody, I really couldn't just hire
24 them. I would have to just recommend.

25 Q When you were working with Vicky at

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1 the University Boulevard store, did she hire
2 anyone during that time period?

3 MS. REHMAN: Objection.

4 A I don't remember.

5 Q You don't recall whether she gave you
6 any specific training on hiring?

7 A Well, she didn't hire anybody but as
8 far as training, she says you have to -- all
9 you can do is take the application and then you
10 have them call a 1-800 number where they get
11 screened and you submit their information and
12 then you wait to hear back from corporate
13 whether or not you can hire them or not.

14 Q How do you know that Vicky didn't
15 hire anybody?

16 A I don't know that she didn't.

17 Q You said she didn't hire anybody.

18 A While I was there that I know of.
19 You asked me if she hired anybody.

20 Q During the short time you were there,
21 she didn't hire anyone?

22 A I don't know.

23 Q She explained the process to you?

24 A Yes.

25 Q And so once you became a store

1 manager outside of Vicky's store, when was the
2 first time you were involved in hiring anyone?

3 MS. REHMAN: Objection to form;
4 you can answer.

5 A I've accepted applications many
6 times. I don't recall exactly when I submitted
7 them or the first time.

8 Q Tell me the steps in the hiring
9 process. If someone comes into your store at
10 Rite Aid and you're the store manager and asks
11 about employment, what happens next?

12 A You have them fill out an
13 application. Then they call a 1-800 number to
14 get screened and then you wait. You've got to
15 wait for corporate to contact you back and say
16 it's okay to proceed with the hiring process
17 and at that point, you can send them for a drug
18 test and then you would wait for corporate
19 again to get back to you on whether or not they
20 can proceed.

21 Q So when the person comes in your
22 store and asks about employment, are there any
23 candidates that you have said, we're not
24 hiring?

25 A No.

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1 Q You've never told a candidate that at
2 Rite Aid?

3 A That we're not hiring?

4 Q Yes.

5 A No. I always take an application.

6 Q So you always give the candidate an
7 application?

8 A Always.

9 Q Do you interview them?

10 A I always talk to somebody. I ask
11 them what they're looking for and things like
12 that but --

13 Q Do you give every single candidate
14 the 800 number to call?

15 A Yes.

16 Q Even if you talked with them and they
17 don't meet your hiring needs?

18 A Yes.

19 Q You still have them call the 800
20 number?

21 A Yes.

22 Q Are you aware of the cost involved in
23 them calling the 800 number?

24 A No.

25 MS. REHMAN: Objection to form;

1 A It -- I believe the term -- I believe
2 it would be called a second notice, I think.

3 Q And it was your practice as a store
4 manager to draft a second notice regarding any
5 discipline issue and send that to HR for
6 approval?

7 A You wouldn't send it. You would
8 actually get on the phone with HR and explain.

9 Q So your practice as a store manager
10 was if you were going to issue a second notice,
11 you would call HR to discuss it with them
12 first?

13 A Yes.

14 MS. REHMAN: Objection to form;
15 you can answer.

16 Q And what was the next step after a
17 second notice?

18 A Then it would be termination.

19 Q How did you handle terminations as a
20 store manager at Rite Aid?

21 A You would ask permission.

22 Q Who did you ask for permission?

23 A HR or your district manager.

24 Actually he would ask permission, too. I don't
25 think they would do it unless HR approved it.

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1 Q And would it be the same type of
2 process where you had already issued a second
3 notice and you wanted to terminate an employee
4 so you would call HR and let them know that you
5 would like to terminate the employee?

6 A Yes.

7 Q And then they would either approve or
8 what?

9 A Or disapprove.

10 Q And did they ever disapprove a
11 termination that you recommended, HR?

12 A Yes.

13 Q How many times did that happen?

14 A I believe twice.

15 Q Tell me about the first time. Who
16 was the employee involved and what was the
17 conduct?

18 A I don't remember all the details of
19 that. One of -- the only time -- most of the
20 time that I will take it that far is if it's
21 rudeness and I'm sure both cases were rudeness
22 but I have had an employee to where they
23 allowed to come back to work.

24 Q So it's your testimony that twice you
25 attempted to terminate or you recommended

1 termination of employees for rudeness where HR
2 told you that they would not approve the
3 termination?

4 A Right.

5 Q And what did you mean when you said,
6 I have had an employee come back to work?

7 A Well, there's a -- you can send them
8 home. HR comes back and says, you know, we
9 can't terminate them and then they would come
10 back. You'd have to bring them back on the
11 schedule.

12 Q How many times as the store manager
13 at Rite Aid have you sent an employee home from
14 work for disciplinary reasons?

15 A I don't remember. I've sent them
16 twice.

17 Q I'm sorry?

18 A About twice that I remember.

19 Q And what happened with the employees
20 the two times that you recall?

21 A The two times that I recall, I mean,
22 they'd go home. One was -- she went home. She
23 contacted the district manager. I contacted
24 HR. And I know that they decided to let her
25 come back to work so we brought her back in.

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1 Q And what happened with the other that
2 you recall?

3 A The other one I did not -- I don't
4 think I sent that one home. I don't remember
5 exactly but I remember HR saying, no, we can't
6 terminate.

7 Q Do you remember who that employee
8 was?

9 A No, I do not.

10 Q Do you remember why HR said you
11 couldn't terminate?

12 A No, I do not.

13 Q Did HR advise you to issue another
14 written discipline to that particular employee?

15 A I don't recall that.

16 Q How many times did you recommend
17 termination of an employee and HR approved your
18 recommendation?

19 A Never.

20 Q You never actually recommended a
21 termination that was approved?

22 A Correct.

23 Q And there were two times that you
24 recall recommending terminations that were not
25 approved?

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1 A Correct.

2 Q But you don't recall either of those
3 employees' names?

4 A LaQuita is one of them. I don't
5 recall the other one.

6 Q Was it LaQuita or Latisha?

7 A No. I'm sorry, LaQuita.

8 Q What do you remember about LaQuita's
9 discipline?

10 A I remember she was rude and I
11 remember not only to customers around the store
12 but kind of transposed to the employees in the
13 store. I remember looking in her file, seeing
14 that she's had plenty of counseling going for
15 all different things and I remember sending her
16 home. And I remember corporate saying, no,
17 we're not going to do that at this time and put
18 her back on the schedule so I brought her back.

19 Q Had you issued any written counseling
20 to LaQuita before you sent her home?

21 A Yes.

22 Q So when you're saying you looked in
23 her file and saw that she'd been counseled for
24 a variety of things, some of those were
25 counseling that you had given her?

1 A Well, if I would come in and I knew
2 that that week we had to get the cough and cold
3 plano-gram done, that's -- my plan would be
4 make sure this gets done this week.

5 Q Did you ever plan beyond the current
6 week?

7 A No. You're really too busy
8 throughout the week to go that far with it.

9 Q In your experience as a store
10 manager, you were too busy to have time to plan
11 beyond the current week that you were working
12 in?

13 A Yes.

14 Q Did you plan day to day?

15 A Sometimes.

16 Q But not every day?

17 A Not every day.

18 Q What about every day that you were
19 working, did you plan the work that had to be
20 accomplished that day?

21 A Sometimes.

22 Q Not every day?

23 A Not every day.

24 Q If you weren't planning the work that
25 needed to be accomplished that day, who was?

1 MS. REHMAN: Objection; form.

2 A Depending on -- your day can get
3 interrupted so if I say -- if I planned the day
4 before and I've got that accomplished and I
5 didn't really look into Wednesday and I showed
6 up Wednesday, before -- sometimes before you
7 even get in there and look at what to do that
8 day, you're already receiving a phone call and
9 your day's already lined up for you.

10 You would receive a phone call from
11 your DM and it would be, this is what we want
12 done; this has to be done today. So your whole
13 day would be spent getting that done.
14 Sometimes you wouldn't know it was coming.
15 Sometimes you would because you'd see it on the
16 calendar but you would try to plan according to
17 the calendar but let's say corporate says, you
18 get two weeks to do this plano-gram. DM says,
19 I want it done in three days. It's kind of
20 hard to plan. Your whole world just gets
21 interrupted sometimes.

22 Q And when your DM would say, I want it
23 done in three days, did you then figure out how
24 it was going to get done in three days?

25 A Yeah.

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1 Q And was it your experience that both
2 Mr. Little and Mr. Gentry would from time to
3 time call you and tell you something that
4 needed to be done immediately in your store?

5 A Yes.

6 Q Did Mr. Little ever tell you who
7 should do what in your store?

8 A I've been told that I needed to do
9 it.

10 Q What did Mr. Little tell you that you
11 needed to do?

12 A Several occasions it tells me --
13 well, we're only talking my store?

14 Q Yes.

15 A Several times it would tell me we
16 need to get this plano-gram done; associates
17 aren't going to get it done in time. You need
18 to work on it yourself or I need you to get
19 your back room cleaned out.

20 Q And you understood that to mean that
21 you personally had to get the back room cleaned
22 out, not that you could get your employees to
23 get the back room cleaned out?

24 A On occasion, yes.

25 Q But there were times when you could

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1 A Oh, yeah. I've been told, oh, we
2 don't have to do that.

3 Q Did you go to the pharmacy manager to
4 ask why the employee was not --

5 A Yes.

6 Q -- helping. And what did the
7 pharmacy manager say?

8 A They don't have to do that.

9 Q Who was that person?

10 A Hank Norwood.

11 Q Were there pharmacy employees who did
12 help when you asked?

13 A Some of them would help without
14 asking.

15 Q Were there some who helped when you
16 asked?

17 A Yes.

18 Q So back to 7139, the first time you
19 were assigned to that store as the store
20 manager, did you prepare the employee work
21 schedules?

22 MS. REHMAN: Objection to form.

23 A Well, there's a computer program.

24 MS. BARBAREE: What's your
25 objection?

1 MS. REHMAN: You said prepared the
2 employees' work schedules.

3 MS. BARBAREE: Yes, I did.

4 MS. REHMAN: You need to define
5 what prepare means.

6 MS. BARBAREE: Do you understand
7 what prepare means?

8 MS. REHMAN: And you see that from
9 his response.

10 MS. BARBAREE: Go ahead.

11 A It's -- I'm going to use the word
12 idiot proof again only because it's a computer
13 program to aid you in it I guess and you would
14 pretty much start the program, hit enter so it
15 would calculate a schedule, calculate hours,
16 calculate dollars, how many hours you can do
17 and automatically schedule everybody. So if
18 that's preparing a schedule, then, yes.

19 Q That's how you prepared your
20 schedules at 7139?

21 A Yes. I would use what they would
22 call a program if -- 7139 I believe used the
23 program called Staffworx.

24 Q In 2006?

25 A Yes.

1 Q So you did not create your own
2 schedule on paper and enter it into Staffworx?

3 A You would put one down on paper.

4 Q I'm asking what you did, not what you
5 could do or what you might do. What did you
6 do?

7 A Sometimes I would write it down first
8 and then start Staffworx. Could I plug it all
9 in, no. I would try but it's -- it's very
10 hard. Sometimes I would win and beat the
11 system but sometimes you can't.

12 Q So why would you write it out first?

13 A Because I -- from my old school of me
14 being me, I would say, well, this is what I'd
15 like to see; this is what I need to have.

16 Q And it's your testimony that as a
17 store manager at 7139, at least in 2006, you
18 couldn't enter the schedule in Staffworx as you
19 had written it?

20 A No. You can enter it like you've
21 written it. Whether or not you would pass all
22 the criteria, no. You would have to sit there
23 and edit so you can get all the little criteria
24 that they have lined up.

25 Q Which would cause you to have to

1 change the schedule you'd written; is that your
2 testimony?

3 A Yes. Yes.

4 Q So Staffworx would not allow you to
5 enter the schedule you wanted?

6 A Correct.

7 Q And what about after Staffworx
8 created its schedule for you at 7139 in 2006,
9 then did you make handwritten changes to that?

10 A Yes. The computer system -- when the
11 computer system scheduled it, could I go in and
12 actually manipulate it and change it?

13 Q Could you make handwritten changes to
14 the schedule generated by Staffworx?

15 A Yes.

16 Q Did you?

17 A Yes. Somebody calls in sick, yes.

18 Q Is that the only time you made
19 changes, when an employee called out?

20 A Or if an employee says, well, I can't
21 really work that day; I have a doctor's
22 appointment, I would make changes where two
23 people switched but the hours would be the
24 same.

25 Q So those are the only changes you've

1 ever made to a Staffworx schedule in 2006 at
2 7139?

3 A If I would have to -- I don't know
4 exactly all the changes I've made but if I had
5 to change a schedule at 7139, it would usually
6 be a shift swap. It could be somebody couldn't
7 come in that day or work that day, I would
8 write somebody else in. Sometimes I would have
9 like where I had a store manager with me
10 training, I would write him in. He would be
11 written in. It wouldn't be in Staffworx.

12 Sometimes if somebody got hired,
13 their first day they would be written on the
14 schedule rather than in Staffworx because
15 sometimes Staffworx took a couple of days to
16 get them in the system.

17 Q Those are the only changes you can
18 recall making?

19 A That I can recall, yes.

20 Q And when you said Staffworx would
21 calculate the hours and dollars for you, what
22 did you mean?

23 A Staffworx would -- with Staffworx,
24 the design of Staffworx from what I can
25 understand is it takes your budget and it says

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1 A I do not know. I do not remember.
2 If I say a figure, I'm just guessing so I don't
3 remember.

4 Q Do you remember annually?

5 A No.

6 Q What about at 7042, do you remember
7 the weekly sales volume?

8 A Seven- to eight-thousand.

9 Q Thousand?

10 A Uh-huh. I do not -- I do not know
11 the figures for pharmacy because they add that
12 in.

13 Q Do you recall whether the weekly
14 sales volume at 7042 was higher or lower than
15 7139?

16 A Lower.

17 Q What condition was the Fayette store
18 in when you moved there as store manager?

19 A Very nice condition.

20 Q What were the store hours?

21 A I believe when I was there, I think
22 originally they were open till -- originally
23 till 9:00 I believe and then it got moved to
24 8:00 at night, 8:00 to 8:00, and then it got
25 changed. It was 9:00, 8:00 to 9:00 and then it

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1 got changed to 8:00.

2 Q Were they open seven days a week?

3 A Yes, they were.

4 Q If I were to ask you today on average
5 how many hours a week you worked while you were
6 at 7139 the first time as the store manager,
7 could you give me an estimate?

8 A Uh-huh. It's an estimate. It would
9 be no less than 50 and probably no more than
10 maybe 65.

11 Q And what would the reasons for the
12 variations be?

13 A The person closing the store at
14 night, if they called out sick, you had to
15 stay. If -- again, you would sometimes get
16 some of these phone calls that say it had to be
17 done today and stick you there all day to get
18 it done. That's pretty much it. Most of it
19 was scheduling, having to, you know, cover
20 shifts.

21 Q What about did it vary seasonally?

22 A Yes.

23 Q Was that store ever remodeled while
24 you were the store manager there?

25 A No.

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1 Q Were any of the stores that you
2 managed as a store manager remodeled?

3 A I'm going to say no.

4 Q Why do you say I'm going to say no?

5 A Well, I don't know if Rite Aid is
6 thinking remodel is painting, painting this and
7 painting that or putting a new floor down in
8 the pharmacy. What I think of remodeling, I
9 think of, you know, there's going to change
10 everything, the whole makeup of it so.

11 Q Did you ever paint anything in your
12 stores as a store manager?

13 A Personally, no.

14 Q Did you ever perform any repair work
15 in any of your stores as a store manager?

16 A Yes.

17 Q What did you repair?

18 A I had to repair -- there's a swinging
19 door between the front end customer area and
20 where you go into the pharmacy.

21 Q Which store was that?

22 A 7141.

23 Q Is that the only repair you can think
24 of?

25 A Well, I wouldn't call that a repair

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1 A Their availability.

2 Q But you weren't, for example,
3 required to always schedule a part-time
4 employee for at least six hours?

5 A No.

6 Q Or you weren't required to ensure
7 that certain part-time employees always
8 received at least 30 hours or something like
9 that?

10 A That hadn't come up to me, no. I've
11 heard of it but it hasn't come to me.

12 Q How have you heard of it?

13 A Pat Lane. That's the -- just now the
14 name came to me. That's the store manager that
15 I trained for 7139. He had an employee that he
16 would I guess when he was making, you know,
17 working out Staffworx and stuff like that, one
18 employee was -- I guess complained about --
19 what he was telling me, one employee complained
20 about how many hours he got and he actually
21 said, I got a phone call from HR saying that
22 he's considered a full-time employee. You have
23 to at least schedule him 35 hours.

24 Q And you'd never had that experience
25 as a store manager?

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1 A No.

2 Q Or no one had ever communicated that
3 guideline to you?

4 A No.

5 Q And you had employees who were
6 considered full time in your stores who worked
7 less than 35 hours a week?

8 A Yes. Now the only difference between
9 full time and part time is whether or not
10 you're going to be paid eight hours for a
11 holiday or four hours for a holiday but most of
12 the full timers had insurance and for them to
13 maintain that, they have to work 35 hours a
14 week average.

15 Q When Mr. Gentry was your district
16 manager, was he helpful to you?

17 A Yes.

18 Q And how frequently was he in your
19 store?

20 A Sometimes once a month; sometimes
21 twice; sometimes three.

22 Q Would you say Mr. Gentry was a micro
23 manager?

24 A I'd say all of them were.

25 Q All of who?

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1 A All my district managers I've
2 experienced.

3 Q All three of them?

4 A Yes.

5 Q When you were a district manager at
6 Fresh Market, were you a micro manager?

7 A No.

8 Q And how do you say that with such
9 conviction?

10 A You can get in the way. If not, I am
11 just -- I was there just to support them and to
12 pass down guidelines from corporate but I
13 wasn't there to run their stores. And if
14 they're going to fall, then they fall. I'm
15 there to help them get picked up but I'm not
16 there to run their stores. That's what I was
17 taught.

18 Q At Rite Aid as a store manager, did
19 you run your stores?

20 A No.

21 Q And why do you say no?

22 A Because everything I do at Rite Aid
23 when I'm there is handed to me; do this, do it
24 this way, and I don't have -- there's choices
25 that I would love to be able to make that I

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1 can't make.

2 Q When you say everything I do is
3 handed to me, is there someone telling you
4 every day what you have to do at Rite Aid?

5 A No. But there is somebody every day
6 telling me what has to be done in the store and
7 if I'm the only person in the store -- if it's
8 me and the cashier, I'm the one that has to do
9 it because the cashier has to stay up front or
10 I become the cashier and they do it.

11 Q And it's your testimony that someone
12 was telling you every day what had to be done
13 in your stores while you were a store manager?

14 A Four out of the five days at least.

15 Q So not every day?

16 A No.

17 Q When you were the opening manager,
18 did you walk your store?

19 A Yes.

20 Q Why?

21 A To see how straight it is so I can
22 make a determination whether or not I have to
23 face the store and bring product forward. I'd
24 have to look for -- I would like for holes.
25 Look and see if it's been cleaned.

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1 Q Were you looking for any safety
2 issues?

3 A Yes.

4 Q Did you make a work list as you were
5 walking?

6 A Not always.

7 Q Sometimes?

8 A Sometimes.

9 Q Did you use the daily chore sheet?

10 A Sometimes.

11 Q Did you use it in the beginning and
12 then stop using it?

13 A No.

14 Q Were there certain things that you
15 did as a store manager at Rite Aid that took
16 less time as you became more experienced?

17 A Yes.

18 Q What were those things?

19 A I got very fast at doing plano-grams.
20 I think the time that I really felt happy was
21 when I finally figured out where the analgesics
22 they call it, the cough and cold, the hardest
23 aisle in the whole store to kind of put up
24 stock and when you finally figure it out, you
25 can look at the box and know exactly where it

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1 Q They have not?

2 A They have not.

3 Q Has your district manager contacted
4 you with questions while you've been on leave?

5 A No.

6 Q Do you know what I mean when I say
7 multitasking?

8 A Yes.

9 Q Is it important to be good at
10 multitasking as a store manager at Rite Aid?

11 A Yes.

12 Q Give me an example of the type of
13 multitasking you do as a store manager at Rite
14 Aid.

15 A There's so many different things you
16 do, I'm trying to think what would be the good
17 answer to that. A multitasking would be if
18 you're straightening up the back room, a good
19 idea would be to have the gun with you so you
20 could at the same time as straightening up, you
21 could verify the counts on hand so that at
22 least, you know, while you're straightening up,
23 you don't end up getting the same product on
24 the truck that you already have so you're
25 killing two birds with one stone by

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1 straightening it and at the same time scanning
2 it so the warehouse knows that you have that
3 product.

4 Another example is when you're doing
5 a plano-gram, you're also, you know --
6 corporate sends you a plano-gram, they send you
7 the tags, the whole nine yards, and I've
8 learned that most of the time the tags they
9 send you for the plano-grams are wrong because
10 they do price changes, too.

11 And so as you're doing -- as I do a
12 plano-gram, I usually -- they want you to take
13 the tag, stick it on the shelf, then the
14 product or actually Rite Aid's way of doing it
15 is tag the entire shelf, then put the product
16 up.

17 A multitasking for me would be I do
18 the plano-gram. I print new tags because I
19 know the price is going to be correct, rather
20 than putting those tags up and learning later
21 that this is not 9.99 anymore. This is 10.99.
22 We need to change it so I've already taken care
23 of that. It's current.

24 Q You've talked a lot about plano-grams
25 today. Did hourly employees in your store do

1 plano-grams while you were a store manager?

2 A Yes.

3 Q So how frequently did you elect to do
4 plano-grams yourself?

5 A You would get -- sometimes -- well,
6 again, this calendar is a good example because
7 it would tell you when plano-grams were coming
8 but you would get sometimes in a week, a bag.
9 You get a bag every week. And in that bag, you
10 pull it out and there's -- could be a stack of
11 plano-grams like this.

12 You could not give to it your
13 employees and say, okay, you get to do these
14 all week because you'll never get them done in
15 time that they want -- that your district
16 manager would want it done by. You would have
17 to take the back of the store, do those
18 plano-grams. The cashier would do the front of
19 the store where they could still keep an eye on
20 the register.

21 So in a week's time I would be
22 working on a plano-gram at least four and five
23 days unless --

24 Q Every week?

25 A Every week, except for there's no

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1 plano-grams during the month of -- I'm not
2 going to say December because they do send one
3 in December, but usually between Thanksgiving
4 and Christmas, you have no plano-gram.

5 Q But otherwise it's your testimony
6 that four out of five days of every week you
7 worked on plano-grams as a store manager?

8 A To keep up, yes, you're working on
9 plano-grams.

10 Q And are you able to tell us with any
11 certainty how many hours a week you spent on
12 plano-grams as a store manager?

13 A No.

14 Q Why not?

15 A Because it would be different.
16 Sometimes I may spend two hours on this one or
17 I may spend all day on another one. Sometimes
18 I'd have to spend three days on one plano-gram
19 and sometimes I might spend two hours Monday
20 and then the next day spent eight hours on it.
21 I couldn't tell you exactly.

22 Q You've also talked a few times today
23 about not being able to have cashiers work on
24 plano-grams. Did you have hourly employees in
25 your store other than cashiers?

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1 Page 77 Line 18 should

2 read: ... 7141

3 Reason for

4 change: Corrected Store #

5

6 Page _____ Line _____ should

7 read: _____ Reason for

8 change: _____

9

10 Page _____ Line _____ should

11 read: _____ Reason for

12 change: _____

13

14 _____

15 Signature

16 Sworn to and Subscribed before me

17 Dawn Bryant, Notary Public.

18 This 24th day of August, 2011.

19 My Commission Expires: MY COMMISSION EXPIRES SEPTEMBER 22, 2014

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25